## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JAVIER RESCALVO-NAJERA, on behalf of himself and others similarly situated,

Case No. 16-CV-7647 (PAE) (KNF)

Plaintiff,

-against-

BTB EVENTS & CELEBRATIONS, INC., BETWEEN THE BREAD II, LTD., COOKIE PANACHE BY BETWEEN THE BREAD, LTD., RICKY I. EISEN, and SEAN MARTIN,

Defendants. :

## **STIPULATION**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the parties that:

- 1. On or before January 18, 2018, Defendants shall produce to Plaintiff copies of all invoices relating to food deliveries made by Plaintiff during the period of September 29, 2010 through January 17, 2018. These invoices shall be admissible for any purpose at the trial of this matter.
- 2. If Defendants fail to produce the full set of invoices, then the invoices previously produced (Bates Nos. 1-291) shall be deemed a representative sample of the invoices relating to food deliveries made by Plaintiff during the period of September 29, 2010 through January 17, 2018, and shall be admissible for any purpose at the trial of this matter, including, but not limited to, demonstrating the average number of food deliveries made by Plaintiff each day and week during the relevant period as well as the average amount of tips that Plaintiff failed to receive as a result of Defendants partial retention of the service charge or processing surcharge associated with those deliveries; and

Defendants shall be precluded at trial from offering any evidence to dispute the adequacy of the sample set as representative of the entire relevant time period.

of the sample set as representative of the entire relevant time period.  Dated: New York, New York	
November 28, 2017	
	Respectfully submitted,
	CILENTI & COOPER, PLLC
	Attorneys for Plaintiff 708 Third Avenue – 6 <sup>th</sup> Floor New York, New York 10017 T. (212) 209-3933
	By: S/
	CLIFTON, BUDD & DeMARIA Attorneys for Defendants The Empire State Building 350 Fifth Avenue, 61 <sup>st</sup> Floor New York, New York 10118 T. (212) 687-7410
	By: S/
SO ORDERED:	

Hon. Paul A. Engelmayer, U.S.D.J.